



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Senate Bill 258	Senate Substitute Amendment 1
<i>Memo published: March 11, 2002</i> <i>Contact: Joyce L. Kiel, Senior Staff Attorney (266-3137)</i>	

This memorandum describes Senate Substitute Amendment 1 to 2001 Senate Bill 258, relating to the specialized transportation assistance program, minimum qualifications for the operator of a human service vehicle (HSV), and the registration of HSVs. Senate Bill 258 was introduced by Senator Lazich and others; cosponsored by Representative Gunderson and others. Senator Lazich introduced Senate Substitute Amendment 1 to the bill. The Senate Committee on Insurance, Tourism, and Transportation recommended adoption of Senate Substitute Amendment 1 and recommended passage of the bill, as amended, both on a vote of Ayes, 5; Noes, 0.

CURRENT LAW

An HSV is a motor vehicle (other than a school bus) used to transport elderly or disabled persons in connection with a transportation assistance program, such as s. 85.21, Stats. (which provides state funding to assist counties in providing transportation services for elderly and disabled persons), or s. 85.22, Stats. (which provides capital assistance to eligible applicants (private, nonprofit organizations or local units of government or their agencies) that provide transportation services to elderly and disabled persons). Some counties operate a specialized transportation service (STS) to provide such transportation assistance, and some counties contract with an STS to provide such transportation assistance.

Current statutes require that an HSV have a minimum of \$10,000 property damage liability coverage and \$75,000 per person bodily injury liability coverage. Current statutes require an annual inspection of the equipment and condition of HSVs. Provisions relating to the operation, equipment standards, and inspection of HSVs are set forth in ch. Trans 301, Wis. Adm. Code.

However, neither current statutes nor current rules establish minimum qualifications for an HSV operator, for example, there is no requirement for a special operator's license or endorsement.

SENATE SUBSTITUTE AMENDMENT 1 TO 2001 SENATE BILL 258

Senate Substitute Amendment 1 to 2001 Senate Bill 258 provides that the Department of Transportation (DOT) may refuse to register an HSV that has not been inspected or that has failed its inspection. In addition, Senate Substitute Amendment 1 to the bill includes: (1) extensive provisions regarding the minimum qualifications for an HSV operator, which, in general, relate to the person's criminal record and driving record; and (2) provisions about certain prohibited activities. These provisions are discussed below.

1. Provisions Relating to STS

Senate Substitute Amendment 1 includes the following provisions relating to an STS that is operated by a county under s. 85.21, Stats., or that contracts with a county for transportation services under s. 85.21, Stats.:

a. Background Check Requirements

Senate Substitute Amendment 1 requires that an HSV operator's background be checked with respect to driving record and criminal convictions. The time by which the background checks must be completed varies depending on whether the person: (1) would be hired on or after the effective date of the bill (that is, the beginning of the fourth month after publication); or (2) is already employed by the STS on the effective date (existing employee). Both are discussed below.

(1) New Employees

An STS must obtain the DOT operating record before hiring a person as an HSV operator after the effective date of the bill. If the operating record has already been obtained by another entity, the STS may obtain the operating record from that entity if there are reasonable grounds to believe that the operating record is accurate and was furnished by DOT to that entity not more than two months previously.

An STS must request that a person seeking employment as an HSV operator complete the background information form that will be prescribed by DOT. The STS may not employ the person until the form has been completed. Within 60 days after receipt of this form, the STS must obtain a criminal history search from the records maintained by the Department of Justice (DOJ). If the person is not a resident of Wisconsin or if at any time within the three years preceding the date of the DOJ search the person has not been a resident of Wisconsin, the STS must make a good faith effort to obtain criminal history records from the state in which the person resides or resided.

If the completed background information form indicates that the STS would be prohibited from employing the person as an HSV operator because of his or her operating record or conviction record as discussed in item b., below, the STS may not employ the person pending receipt of the criminal history records.

(2) Existing Employees

For a person who is employed as an HSV operator on the effective date of the bill, the substitute amendment essentially provides a 12-month delay in applicability with respect to background checks and conviction and driving record. Specifically, the STS must require that the person complete the DOT background information form not later than the first day of the 13th month after the bill's effective date. Within 60 days after receiving this form, the STS must obtain the criminal history records and DOT operating records as discussed above. The prohibitions on employment discussed in item b., below, do not apply to existing employees until the first day of the 13th month after the bill's effective date.

(3) Periodic Background Checks and Updates

At least every four years, an STS must obtain the DOT operating record for each of its HSV operators. Also, if an HSV operator is involved as the operator of a motor vehicle in any accident, the person must report this, in writing, to the STS within 10 days after the occurrence, regardless of whether the person was issued a traffic citation or charged with an offense and regardless of whether the person was operating an HSV at the time of the accident. An HSV operator also must report to the STS, within 10 days, any suspension or revocation of the person's operating privilege.

In addition, each HSV operator must complete an updated DOT background information form and provide it to the STS at least every four years. Within 60 days of receiving this form, the STS must again obtain the criminal history records as discussed above.

b. Prohibition on Employing

Senate Substitute Amendment 1 provides that, notwithstanding the statutes relating to employment discrimination, an STS may not employ as an HSV operator any person to whom any of the following applies:

(1) Convictions. A person who the STS knows or should have known has any of the convictions shown on attached ***Tables 1, 2, 3, or 4***, within the specified time periods.

(2) No Operator's License and Accident Record.

- (a) A person who the STS knows or should have known does not possess a valid operator's license that would permit operation of the HSV.
- (b) A person who the STS knows or should have known was involved, in the previous 12 months, as the operator of any motor vehicle in more than two traffic accidents that resulted in convictions for violating motor vehicle laws.

As noted above, these prohibitions do not apply to existing employees until the first day of the 13th month after the bill's effective date.

c. Prohibition on Certain Activities

Senate Substitute Amendment 1 includes the following provisions relating to certain activities:

(1) An STS must issue a photo identification card to an HSV operator. The HSV must designate a location for the card to be conspicuously displayed in clear view of the passengers in the HSV. The HSV must not allow a person to operate an HSV without displaying this identification card. (These provisions apply on the bill's effective date.)

(2) An STS may not allow an HSV operator to drive more than 10 hours in any 18-hour period. If an STS does not operate every day of the week, the STS may not allow an operator to drive any time exceeding 60 hours in any period of seven consecutive days. If an STS operates every day of the week, the STS may not allow an operator to drive any time exceeding 70 hours in any period of eight consecutive days. (These provisions apply on the bill's effective date.)

(3) An STS may not employ a person as an HSV operator unless the person has been fully trained, within the previous 24 months, in the proper use of all passenger restrain systems available in the HSV operated by that person. (This provision applies on the first day of the 13th month after the bill's effective date.)

d. Records Maintenance Requirements

An STS must maintain and furnish all records determined necessary by DOT to determine compliance with s. 85.21, Stats., and the minimum HSV operator qualifications requirements of proposed s. 346.923 in the substitute amendment, as discussed in item 2., below. If an STS contracts with a county to provide transportation services under s. 85.21, Stats., it must maintain all records and furnish all information determined necessary by the county or DOT for purposes of program or contract monitoring, auditing, or evaluation, or to determine compliance with s. 85.21, Stats., or proposed s. 346.923.

e. Penalties for Noncompliance

The substitute amendment provides the following penalties for noncompliance with these provisions:

- (1) For violation of any requirement or prohibition listed in items b. or c., above, a person must be fined not more than \$1,000 for the first offense and not less than \$1,000 nor more than \$5,000 for each subsequent offense. Each day of violation after the first conviction constitutes a separate offense.
- (2) For violation of the requirement to timely obtain a DOT operating record and criminal history record search as listed in item a., above, a person may be required to forfeit not more than \$200. Each failure to obtain the DOT operating record and criminal history record search constitutes a separate offense.

In addition to any criminal penalties and civil forfeitures, the substitute amendment provides that if a county operates an STS and violates a provision in items a. to c., above, DOT may not make transportation assistance payments under s. 85.21, Stats., to the county.

Also, a county may not enter into a contract with an STS that has violated any of the provisions in items a. to c., above, within the previous 12 months, unless the violation has been remedied no later

than 30 days after the STS received notice of the violation. The substitute amendment also provides that a contract between a county and STS for services under s. 85.21, Stats., must provide that if the STS violates any of the provisions in items a. to c., above, during the term of the contract, the county may terminate the contract without liability for the uncompleted portion of the contract or may withhold payment until the STS remedies the violation. If a county does not comply with these provisions, DOT may not make transportation assistance payments under s. 85.21, Stats., to the county.

2. Provisions Relating to HSV Operator Employed by an STS

In addition to provisions applicable to STSs, Senate Substitute Amendment 1 includes parallel provisions relating to HSV operators and penalties applicable to HSV operators for failure to comply with these provisions. The requirements and penalties applicable to HSV operators employed by an STS are as follows:

- a. Requirement to complete the DOT background information form prior to employment (or for existing employees within 12 months after the bill's effective date) and to complete an updated DOT background information form at least every four years. (Penalty: For false or incomplete information of any material fact--forfeiture of not more than \$1,000.)
- b. Requirement to timely report to STS all accidents and any suspension or revocation of operating privileges as noted in item 1. a. (3), above. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- c. Prohibition against operating an HSV without a valid operator's license. (Penalty: In addition to any penalties applicable to operating without a license--forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- d. Prohibition against operating an HSV if the person was involved, in the previous 12 months, as the operator of any motor vehicle in more than two traffic accidents that resulted in convictions for violating motor vehicle laws. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- e. Prohibition against operating an HSV if the person has any of the convictions on attached ***Tables 1, 2, 3, or 4***, within the specified time periods. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- f. Requirement to conspicuously display identification card in the HSV. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- g. Requirement to be fully trained, within the two previous years, in the proper use of all passenger restraint systems available in the HSV; requirement to properly restrain all passengers required by statute or rule to be restrained; and requirement to respond to requests from passengers with respect to being properly restrained. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)

These provisions, other than the provision in item f., do not apply to existing employees until the first day of the 13th month after the bill's effective date.

3. Provisions Relating to DOT

Senate Substitute Amendment 1 requires DOT to do the following:

- a. Prescribe a background information form to be completed by a person employed or seeking employment as an HSV operator. DOT must provide counties and STSs with copies of the form upon request.
- b. Prepare and make available to counties and STSs informational materials about compliance with the provisions of the substitute amendment, and establish a method of communication, which may include a statewide, toll-free telephone hotline, to respond to questions about compliance with provisions in the substitute amendment.

As discussed in item 1. e., above, Senate Substitute Amendment 1 prohibits DOT from making transportation assistance program payments under s. 85.21, Stats, to a county that operates an STS in violation of the provisions in items 1. a. to c., above, or to a county that either: (a) contracts with an STS that has violated the provisions in items 1. a. to c., above, within the previous 12 months, unless the violation has been remedied no later than 30 days after the STS received notice of the violation; or (b) does not include provisions in its contract with an STS permitting termination of the contract for violation of the provisions in items 1. a. to c., above, during the term of the contract.

4. Provisions Relating to DOJ

In addition to performing the DOJ criminal background record check, Substitute Amendment 1 requires DOJ to prepare and make available to counties and STSs informational materials about criminal background record checks. DOJ must establish a method of communication, which may include a statewide, toll-free telephone hotline, to respond to questions about criminal background information specified in the substitute amendment.

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Attachment

ATTACHMENT

TABLE 1

Conviction *within the previous 24 months* under any of the following Wisconsin statutes, or under a local ordinance enacted in conformity with such a statute or a violation of a federal law or the law of another jurisdiction (including an American Indian tribe or band in Wisconsin) that would be a violation of any of the following Wisconsin statutes:

s. 346.63 (1), (2), (2m), (5), or (6)	Various provisions relating to operating a vehicle under the influence of an intoxicant or other drug (OWI)
s. 346.63 (7) (two or more offenses)	Operating commercial motor vehicle with alcohol
s. 940.09 (1)	OWI, causing death of another person
s. 940.25	OWI, causing injury of another person

TABLE 2

Conviction *at any time* under any of the following Wisconsin statutes or a violation of a federal law or the law of another jurisdiction (including an American Indian tribe or band in Wisconsin) that would be a violation of any of the following Wisconsin statutes:

s. 85.21 (5) (c) (proposed in bill)	Providing false or incomplete information on DOT background information form
s. 940.01	First-degree intentional homicide
s. 940.02	First-degree reckless homicide
s. 940.03	Felony murder
s. 940.05	Second-degree intentional homicide
s. 940.12	Assisting suicide
s. 940.19 (2), (3), (4), (5), or (6)	Various categories of felony battery
s. 940.22 (2) or (3)	Sexual exploitation by therapist or failure to report such exploitation
s. 940.225 (1), (2), or (3)	First-, second-, or third-degree sexual assault
s. 940.285 (2)	Abuse of vulnerable adult
s. 940.29	Abuse of resident of penal facility
s. 940.295	Abuse and neglect of patient and resident
s. 948.02 (1) or (2)	First- or second-degree sexual assault of child
s. 948.025	Repeated sexual assaults of same child
s. 948.03 (2)	Intentionally causing bodily harm to child
s. 948.05	Sexual exploitation of child
s. 948.055	Causing child to view or listen to sexual activity

s. 948.06	Incest with child
s. 948.07	Child enticement
s. 948.08	Soliciting child for prostitution
s. 948.11 (2) (a) or (am)	Two felony categories of exposing a child to harmful material, descriptions, or narratives
s. 948.12	Possession of child pornography
s. 948.13	Child sex offender working with children
s. 948.21 (1)	Neglecting a child
s. 948.30	Abduction of another person's child

TABLE 3

Conviction that would preclude eligibility for a *school bus endorsement*, that is, an offense listed in s. 343.12 (2) (d) or (e), Stats., or the administrative rules promulgated by DOT under these statutes. In general, this includes a conviction under any of the following Wisconsin statutes or a violation of a federal law or the law of another jurisdiction (including an American Indian tribe or band in Wisconsin) that would be a violation of any of these Wisconsin statutes.

The offenses listed in s. 343.12 (2) (d), Stats., relate to the following driving offenses for which there has been a conviction within the *previous two years*, and, in general, include a local ordinance enacted in conformity with any of the following:

s. 346.62	Reckless driving
s. 343.44 (1)	Operating while suspended or revoked
s. 346.63 (7) (two or more offenses)	Operating commercial motor vehicle with alcohol
Offenses enumerated in s. 343.31 (1) or (2)	Various traffic related offenses which result in revocation or suspension of an operator's license
Offenses counted under s. 343.307 (2)	Various provisions relating to OWI

Section 343.12 (2) (e), Stats., simply refers to a conviction of a felony or offense against public morals within the *previous five years*. (Legislation is currently pending (2001 Senate Bill 229) to consider convictions *at any time*.) DOT has promulgated administrative rules specifying the offenses against public morals, which are set forth in s. Trans 112.15, Wis. Adm. Code. The following offenses are currently included in s. Trans 112.15 (1) (a), Wis. Adm. Code:

ch. 944	Crimes against sexual morality
s. 940.225 (3m)	Fourth-degree sexual assault

The following offenses are currently included in s. Trans 112.15 (1) (b), Wis. Adm. Code, *but only if there has been a felony conviction*:

ch. 940	Offenses against life or bodily security
s. 941.03, 1985-86 Stats.	Obstructing highway, tampering with traffic signals, and other related intentional acts creating unreasonable risks and high probability of death or great bodily harm
s. 941.20	Endangering safety by use of dangerous weapon
s. 941.30	Recklessly endangering safety
s. 941.31	Possession of explosives for unlawful purpose
s. 941.32	Administering dangerous or stupefying drug
s. 941.325	Placing foreign objects in edibles
s. 943.01	Criminal damage to property
ss. 943.02 to 943.05	Various forms of arson
s. 943.06	Molotov cocktails
s. 943.32	Robbery
ch. 961	Violation of Uniform Controlled Substances Act
Unspecified	Any other felony that has an element of the use or threat of use of force or causing or threat of causing injury to life or bodily security
Unspecified	Any attempt or being a part to any of these crimes

TABLE 4

Conviction within the *previous 60 months* for violation of the following:

s. 346.923 (proposed in bill) other than proposed s. 346.923 (1) (g) (displaying identification card in HSV)	Violating minimum HSV operator qualifications, as discussed in item 2. of memorandum
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